

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:) Attorney Ref.: ZR470-10001
Inventor: Ken W. Anderson)
Application No.: 10/664,481) Examiner: Nathan H. Brown Jr.
Filed: September 17, 2003) Group Art Unit: 2129
For: Method for Scheduling and Usage) Confirmation No.: 4371
of Satellite Bandwidth) Date Submitted: July 26, 2010

Mail Stop PATENT EXT.
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

**APPLICATION FOR PATENT TERM ADJUSTMENT UNDER
37 C.F.R. § 1.705(b) AND 35 U.S.C. § 154**

Dear Sir:

The following remarks are submitted in response to the Determination of Patent Term Adjustment (“PTA”) under 35 U.S.C. § 154(b) (the “Determination”), which was mailed with a Notice of Allowance on April 26, 2010, in the above-referenced patent Application. The Determination stated that the PTA is 1727 days. The Applicants, however, contend that the PTA should be 2138 days and offer an explanation for this number below. Accordingly, the Applicants seek a Reconsideration of PTA in accordance with 37 C.F.R. § 1.705(b). No Terminal Disclaimer was filed in the present application. Per 37 C.F.R. § 1.18(e), a payment of \$200.00 is accompanied with this response.

According to *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010), the Patent Office has been incorrectly determining PTA’s. The Applicants contend that the Determination was made in error and respectfully request that a new determination be made in accordance with the *Wyeth* decision and as outlined below.

The *Wyeth* court construed 35 U.S.C. § 154(b) to be understood by a simple equation: Delays by the Patent Office missing a variety of deadlines as prescribed by 35 U.S.C. § 154(b)(1)(A) (“A Delays”) plus Delays by the Patent Office for not issuing a

Patent within three years of the filing date as prescribed by 35 U.S.C. § 154(b)(1)(B) ("B Delays") minus the number of days due to A Delays that also overlap the B Delays ("Overlap") minus the Applicants' Delays equals the PTA. In other words:

$$PTA = A \text{ Delays} + B \text{ Delays} - Overlap - \text{Applicants' Delay}$$

It should be noted that all delays are measured in terms of days.

The table in Appendix A, submitted herewith, outlines the relevant dates of the various actions by the Office and the Applicants that occurred during the prosecution of the present application, which may have resulted in delays of one form or another. The calculations presented herein and summarized in Appendix A assume that the present application will issue on November 23, 2010. This date is the Tuesday prior to the four-month deadline for issuing a patent after the Applicants have paid the issue fee.

As summarized in the table, the only A Delays were due to the Patent Office issuing a first Action 1786 days after fourteen months had passed from the initial filing of the present application.

The B Delays total 1528 days. This number comes from the fact that, if the patent issues on November 23, 2010, the Patent Office will miss the three-year deadline prescribed by 35 U.S.C. § 154(b)(1)(B) by 1528 days.

A delays overlapped B delays by 1117 days.

The Applicants delayed a total 59 days. This total is due to the Applicants' delay in filing a response to the first action issued by the Office, which was filed 59 days beyond the three-month shortened statutory period.

The total Patent Term Adjustment, which is reflected in the bottom line of the table, is 2138 days. Expressed in the *Wyeth* equation: 1786 days (A Delay) + 1528 days (B Delay) - 1117 days (Overlap) - 59 days (Applicants' Delay) = 2138 days.

Accordingly, the Applicants respectfully request that the PTA be adjusted to 2138 days.

Respectfully submitted,

MIDDLETON REUTLINGER

Date: July 26, 2010

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Appendix A

Activity	Issue/Filing Date	Deadline	A Delay	B Delay	Overlap	Applicants' Delay
Filing Date:	September 17, 2003					
First Action Mailed:	October 8, 2009	November 17, 2004				
Response to First Action:	March 8, 2010	January 8, 2010				
Supp. Resp. to First Action:						
Second Action Mailed:						
Response to Second Action:						
Supp. Resp. to Second Action:						
Third Action Mailed:						
Response to Third Action:						
Supp. Resp. to Third Action:						
Fourth Action Mailed:						
Response to Fourth Action:						
Supp. Resp. to Fourth Action:						
Fifth Action Mailed:						
Response to Fifth Action:						
Supp. Resp. to Fifth Action:						
Sixth Action Mailed:						
Response to Sixth Action:						
Supp. Resp. to Sixth Action:						
Seventh Action Mailed:						
Response to Seventh Action:						
Supp. Resp. to Seventh Action:						
Eighth Action Mailed:						
Response to Eighth Action:						
Supp. Resp. to Eighth Action:						
Notice of Allowance	April 26, 2010	July 8, 2010				
Projected Issue Fee Paid:	July 26, 2010	July 26, 2010				
Projected Issue Date:	Tuesday, November 23, 2010	November 26, 2010				
Three year deadline:		September 17, 2006				
First RCE Filed:						
Delay Totals:			1786	1528	-1117	-59
Patent Term Adjustment (days):					2,138	